

# EXHIBIT B

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE CHARLENE PADOVANI MITCHELL, JUDGE PRESIDING  
DEPARTMENT NUMBER 10 *San Francisco County Superior Court*

ENDORSED  
FILED

JUN 13 2006

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PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff, )

vs. )

MARCUS WITFIELD )

Defendant. )

GORDON PARK-LI, Clerk  
BY: CAROLYN D. MACABEO  
Deputy Clerk

Court No. 2260553

**FELONY PLEA**

Pages 1 - 11

**Reporter's Transcript of Proceedings**

Thursday, June 1, 2006

**APPEARANCES OF COUNSEL:**

For Plaintiff:

Kamala Harris, District Attorney

850 Bryant Street - Suite 300

San Francisco, California 94103

BY: **REMA BREALL**, Assistant District Attorney

For Defendant:

JEFF ADACHI, PUBLIC DEFENDER

555 Seventh Street Suite 205

San Francisco, California 94103

BY: **ROBERTO EVANGELISTA**, Deputy Public Defender

COPY

Reported By: Deborah Neville, CSR #9703

1 Thursday, June 1, 2006

A.M.

2 PROCEEDINGS IN OPEN COURT

3 \* \* \* \* \*

4 **THE COURT:** Line 18 Marcus Witfield.

5 **MS. BREALL:** Rema Breall for the People.

6 **MR. EVANGELISTA:** Public Defender Roberto Evangelista on  
7 behalf of Mr. Witfield.

8 Your Honor, also present just for the record is  
9 Marc Silversmith who was an attorney who knows Marcus very well.  
10 Your Honor, I think we have a resolution in this case.

11 Over the advice of counsel, Mr. Witfield will enter a plea  
12 to an amended Count I, 11351 of the Health and Safety Code, as a  
13 felony.

14 May I admonish my client?

15 **THE COURT:** What is the amended complaint going to be.

16 **MR. EVANGELISTA:** 11351. We are taking the five out -- .5  
17 out.

18 **MS. BREALL:** It changes from time from three, four, five to  
19 two, three, four.

20 **THE COURT:** All right. You may proceed.

21 **MR. EVANGELISTA:** This is a plea over my objection.

22 **THE COURT:** Do you waive any irregularities in the oral  
23 amendment?

24 **MR. EVANGELISTA:** I do, Your Honor.

25 **THE COURT:** Waive instruction and arraignment?

26 **MR. EVANGELISTA:** Waive instruction and arraignment.  
27 Enter plea of not guilty.

28 **THE COURT:** You may proceed.

1       **MR. EVANGELISTA:** Mr. Witfield is entering enter a plea over  
2 my advice. So we are going to proceed.

3       Mr. Witfield, I'm going to make a statement to the Court  
4 about your case. It is very important that you listen to it  
5 carefully. Your Honor Mr. Witfield wants to enter a plea of  
6 guilty to the charge of violating Health and Safety Code  
7 section 11351, as a felony.

8       I have told him that several Constitutional rights will be  
9 given up if the Court accepts this plea including;

10       First: his right to have a preliminary hearing before a  
11 magistrate to determine if a felony has been committed and there  
12 is sufficient cause to believe that he is the person who  
13 committed the offense, and to have his attorney cross-examine  
14 witnesses.

15       Second: his privilege against self-incrimination; that is,  
16 he is under no obligation to say anything that may tend to  
17 incriminate him, and I have told him that by pleading guilty he  
18 is, in fact, incriminating himself.

19       Third: his right to be tried by a jury; in this regard I  
20 have advised him that he cannot be convicted unless all twelve  
21 jurors agree that the prosecution has proved his guilt beyond a  
22 reasonable doubt.

23       Fourth: his right to see and hear his accusers testify in  
24 open court in his presence and to have his attorney  
25 cross-examine them.

26       We have discussed the elements of the charge against him and  
27 the possible defenses to the charges. And I have advised him of  
28 the law as it relates to the facts of this case. I have advised

1 him of the legal consequences of a guilty plea to the charges  
2 and that the punishment for the offense could be, two years,  
3 three years or four years in State Prison.

4 Upon his release from custody he may be placed on parole for  
5 a period of four years from the date of his initial parole.  
6 However if parole is revoked, confinement to prison under other  
7 provisions of law shall not exceed 12 months except as provided  
8 by Penal Code Section 3057 (C), subsequent acts of misconduct  
9 committed by parolee while confined pursuant to that parole  
10 revocation.

11 This plea is offered as a result of discussions with the  
12 District Attorney and the Court. I have informed Mr. Witfield  
13 that the District Attorney will recommend the Court has  
14 indicated the following sentence:

15 Imposition of sentence will be suspended.

16 He will be placed on formal probation to the Adult Probation  
17 Department for a period of three years on the following terms  
18 and conditions:

19 He will receive credit for time serve served at the time of  
20 sentencing.

21 He must submit his person, residence and vehicle and  
22 property to a search by any peace officer or probation officer,  
23 at any time of day or night, with or without his consent, with  
24 or without a warrant, and with or without reasonable or probable  
25 cause.

26 He is not to posses any controlled substances without a  
27 prescription.

28 He must submit to drug testing and counseling as deemed

1 appropriate by the Adult Probation Department.

2 Pursuant to Health and Safety Code section 11590, he must  
3 register as a drug offender with the chief of police in the city  
4 or with the sheriff if he lives in an unincorporated area. He  
5 must reregister within 30 days of moving.

6 He must pay a \$200 probation revocation restitution fine  
7 which will stayed unless and until he were to violate probation.

8 He must pay a \$50 laboratory fee.

9 \$200 to the restitution fund.

10 A \$20 security fee.

11 He must pay -- he must submit to DNA testing pursuant to  
12 Penal Code Section 296.

13 He must obey all laws.

14 He must also abide by a stay away order.

15 In addition, and not as a condition of probation, he may be  
16 required to pay up to \$150 for the preparation of a presentence  
17 report, up to \$50 a month for probation supervision, and a  
18 booking fee of \$135.

19 **THE COURT:** Is Marcus Witfield your true name?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** You've heard the statements made to the Court by  
22 your attorney are they true in all respects?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** Do you personally give up your right to remain  
25 silent and not to say anything that would tend to incriminate  
26 you?

27 **THE DEFENDANT:** Yes.

28 **THE COURT:** Do you personally give up your right to see and

1 question the witnesses against you?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Do you personally give up your right to a  
4 preliminary hearing?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** Do you personally give up your right to be tried  
7 by a jury?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** This sentence is one where you are going to be  
10 placed on probation. Do you understand that if you violate any  
11 of the terms of that probation you may be sentenced to State  
12 Prison without a trial?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Do you understand that you will be required to  
15 provide DNA samples as a consequence of your plea?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** If you are not a citizen your plea of guilty may  
18 result in your deportation, exclusion from admission to the  
19 United States or denial of naturalization as a United States  
20 citizen.

21 If you are not a citizen you have the right to speak with  
22 your embassy or consulate prior to entering your plea. Do you  
23 understand this?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** Mr. Evangelista, have you had an opportunity to  
26 speak with Mr. Witfield about the immigration consequences of  
27 his plea, if there are any?

28 **MR. EVANGELISTA:** Yes, Your Honor.



1       **THE COURT:** The acceptance of your plea at this time is not  
2 binding on the Court. If the Court withdraws approval at the  
3 time of sentencing, you may withdraw your plea of guilty and  
4 enter a plea of not guilty if you wish to do so. But if that  
5 happens the District Attorney may reinstate any dismissed  
6 charges or allegations. Do you understand that?

7       **THE DEFENDANT:** Yes.

8       **THE COURT:** If I'm not here on the date of sentencing do you  
9 agree to be sentenced by another judge as long as the sentence  
10 is the same sentence as stated to you today?

11       **THE DEFENDANT:** Yes.

12       **THE COURT:** Has anyone threatened or put pressure on you to  
13 plead guilty?

14       **THE DEFENDANT:** No.

15       **THE COURT:** Do you do this freely and voluntarily?

16       **THE DEFENDANT:** Yes.

17       **THE COURT:** Before coming to court today did you take any  
18 drugs, alcohol, medicine, or anything else that would affect  
19 your ability to think?

20       **THE DEFENDANT:** No.

21       **THE COURT:** Is your mind clear?

22       **THE DEFENDANT:** Yes.

23       **THE COURT:** Do you know what you are doing?

24       **THE DEFENDANT:** Yes.

25       **THE COURT:** What is your plea to a charge of violating  
26 Health the Safety Code section 11351, a felony?

27       **THE DEFENDANT:** Guilty.

28       **THE COURT:** What is the factual basis for this plea?



1       **MR. EVANGELISTA:** I'll stipulate based upon police report  
2       number 06333675 despite the fact that I've instructed  
3       Mr. Witfield that he has several defenses to the case. I will  
4       stipulate.

5       **MS. BREALL:** I believe the correct number is just one number  
6       off, its 060333675.

7       **MR. EVANGELISTA:** Stipulated.

8       **THE COURT:** The Court finds that there is a factual basis  
9       for your plea based upon the stipulation of the parties.

10       And further finds that you have been advised of your rights.

11       That you have knowingly, intelligently and voluntarily  
12       waived those rights and entered your plea of guilty well  
13       understanding the consequences of doing so.

14       Therefore your plea is accepted by this Court.

15       And you are referred to the Adult Probation Department for  
16       the preparation of a presentence report.

17       You are ordered to cooperate with the Adult Probation  
18       Department in giving an interview so that the presentence report  
19       can be prepared.

20       You are also ordered to cooperate in giving a sample of your  
21       saliva so that the DNA processing can be accomplished.

22       We will put this matter on for sentencing on -- you want  
23       June 22nd, Mr. Evangelista?

24       **MR. EVANGELISTA:** Is that the earliest day we can get?

25       **THE COURT:** That's the earliest day you can get. You can't  
26       get earlier than the blackboard says for custody. Impossible.

27       **MR. EVANGELISTA:** That's fine, Your Honor. May I have one  
28       second?

1 (Pause in the proceedings.)

2 **THE COURT:** Yes.

3 **MR. EVANGELISTA:** My client is asking me to readdress the  
4 same question. As the Court is aware and the D.A. is aware, my  
5 client has a no warrant hold for CDC juvenile. He's got a  
6 juvenile hold. He's asking the Court if you would please  
7 release him on his own recognizance so he can quickly and  
8 expeditiously be moved to CY and issue the bench warrant that  
9 will ensure he will come back. He's anxious to return quickly  
10 so -- he's anxious to move on and settle his parole matter.

11 **THE COURT:** Well I don't doubt that may be the case but as  
12 already been indicated, Mr. Witfield, I'm not releasing you on  
13 your own recognizance.

14 **THE DEFENDANT:** Not even to go settle my YA matter?

15 **THE COURT:** No. No. Because something may happen between  
16 here and there.

17 **THE DEFENDANT:** They wouldn't be able to come and get me  
18 until --

19 **THE COURT:** Until you are sentenced. You have to handle  
20 this matter before you are released.

21 **MS. BREALL:** The stay away order.

22 **THE COURT:** I have it right here. I'm going to do that.  
23 All right. So we have to put it on for sentencing for  
24 June 22nd. You are ordered present in this court at that time.

25 You are ordered to stay 150 yards away -- 150 yards away  
26 from 2024 Mission Street in San Francisco.

27 Do you have any questions about the stay away order?

28 **THE DEFENDANT:** 2024?

1       **THE COURT:** 2024 Mission Street in San Francisco.

2       **THE DEFENDANT:** No questions.

3       **THE COURT:** We'll see you on the 22nd.

4       **MS. BREALL:** For the record. The stay away order has been  
5 served on the defendant though counsel.

6       .

7                       ---o0o---

1 State of California )  
2 County of San Francisco )  
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5 I, DEBORAH NEVILLE, Official Reporter for the Superior  
6 Court of California, County of San Francisco, do hereby certify:

7 That I was present at the time of the above proceedings;

8 That I took down in machine shorthand notes all proceedings  
9 had and testimony given;

10 That I thereafter transcribed said shorthand notes with the  
11 aid of a computer;

12 That the above and foregoing is a full, true, and correct  
13 transcription of said shorthand notes, and a full, true and  
14 correct transcript of all proceedings had and testimony taken;

15 That I am not a party to the action or related to a party  
16 or counsel;

17 That I have no financial or other interest in the outcome  
18 of the action.  
19  
20

21 Dated: June 11, 2006  
22  
23

24 \_\_\_\_\_  
DEBORAH NEVILLE, CSR No. 9703  
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